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**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF RAYMOND J. WHALEN
DOCKET NO. 2016-05
CLAIM OF RAYMOND J. WHALEN

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment ("Motion") filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal requesting that Raymond J. Whalen's ("Claimant") Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to summary judgment as a matter of law.

PSERS filed its Motion on August 14, 2019, and served a copy by First Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32-33.36. By letter dated August 14, 2019, PSERS notified Claimant that he had 30 days to respond to PSERS' Motion under Pa.R.C.P. No. 1035.3. On September 12, 2019, Claimant's counsel filed a response ("Claimant's Reply") on behalf of Claimant.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The function of a summary judgment motion is to eliminate the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. See *Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). The Board's regulations authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa. Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party and give him the benefit of all reasonable inferences. See *Thompson*

v. Nason Hosp., 535 A.2d 1177, 1178 (Pa. Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). This Board must accept the non-moving party's well-pleaded facts as true. See *Yount v. Pa. Dep't of Corr.*, 966 A.2d 1115, 1118 (Pa. 2009) (*citing P.J.S. v. Pa. State Ethics Commission*, 723 A.2d 174, 176 (Pa. 1999)); *see also Kelly by Kelly v. Ickes*, 629 A.2d 1002, 1004 (Pa. Super. 1993). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa. Cmwlth. 1984).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying "(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced." Pa.R.C.P. No. 1035.3(a). "An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence." Pa.R.C.P. No. 1035.3(b).

In Claimant's Reply, he "does not dispute" the facts set forth in PSERS' Motion. Claimant's Reply at 1. Therefore, as to the facts alleged in PSERS' Memorandum of Facts, there is no genuine issue of material fact. Additionally, by admitting the factual averments in PSERS' Motion, Claimant admits the authenticity and relevance of the exhibits marked PSERS-1 through PSERS-17, including the "Settlement Agreement and Release" ("Settlement Agreement") that is at issue here. Because the material facts averred by PSERS are undisputed, a decision based on the evidence of record is proper. *C.f. McCarthy v. Dan Lepore & Sons Co.*, 724 A.2d 938, 940 (Pa. Super. 1998) (a proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense and, therefore, there is no issue to be submitted to the adjudicator).

In Claimant's Reply, he asserts seven counterstatements of fact. The Board has reviewed the counterstatement of facts and concludes there is no issue of material fact

that would prevent summary judgment. Claimant's counterstatements of fact constitute evidence about the circumstances under which Claimant entered into a Settlement Agreement with his employer, the Wyoming Valley West School District ("District"). Claimant maintains that his counterstatements and exhibits support his interpretation of the Settlement Agreement, which is that the \$15,000 settlement payment was intended as back pay and retirement-covered compensation and, therefore, should be included in the calculation of his final average salary. Claimant's counterstatements and exhibits, however, are not supported by, or incorporated into, the Settlement Agreement.

The courts in this Commonwealth have long recognized that "[p]rinciples of contract law govern the enforceability of settlement agreements." *Miller v. Clay Twp.*, 555 A. 2d 972, 974 (Pa. Cmwlt. 1988). When contract terms are clear and unambiguous, the intention of the parties must be ascertained from what the agreement itself expressed, not from what the parties may have silently intended; it is not appropriate, under the guise of contract construction, to alter the terms to which the parties expressly agreed. *Account of Robert Holder*, Docket No. 2016-20, at *19 (PSERB March 8, 2019) (citing *Boro Constr. v. Ridley Sch. Dist.*, 992 A.2d 208, 214 (Pa. Cmwlt. 2010)).

The Settlement Agreement is clearly and unambiguously drafted. It contains the following integration clause, in pertinent part:

IT IS FURTHER AGREED AND UNDERSTOOD that this release contains the entire agreement between the parties hereto and that the terms of this release are contractual and not a mere recital.

(PSERS-3). The clause's presence in the Settlement Agreement is a clear indication that the Settlement Agreement represents the entirety of the District's and Claimant's negotiations, conversations, and agreements prior to its execution. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436 (Pa. 2004); *Holder*, Docket No. 2016-20, at *24; see also *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186 (Pa. 2007); *Cumru Twp. Auth. v. Snekul, Inc.*, 618 A. 2d 1080 (Pa. Cmwlt. 1992). Once a writing is determined to be the parties' entire contract, the parol evidence rule applies, and evidence of any

previous oral or written negotiations or agreements involving the same subject matter as the contract is almost always inadmissible to explain or vary the terms of the contract. *Holder*, Docket No. 2016-20, at *25 (citing *Yocca*, 854 A.2d at 436-37). The exception to the general application of the parol evidence rule allows the introduction of parol evidence, to vary a writing that is meant to be the parties' entire contract, in the limited circumstances in which a party asserts that a term was omitted from the contract because of fraud, accident, or mistake, or that the contract is ambiguous. *Id.* (citing *Yocca*, 854 A.2d at 437).

Here, the Settlement Agreement is unambiguous and Claimant has not alleged fraud, accident, or mistake in the execution of the Settlement Agreement, so there is no basis for resorting to parol evidence to determine what the Settlement Agreement means or how it should be interpreted. Claimant is thus foreclosed from adding to or subtracting from the Settlement Agreement's terms through the use of parol evidence, i.e., evidence outside the four corners of the document's terms. Accordingly, Claimant's counterstatements of fact are neither material—because they cannot be introduced to vary the terms of the Settlement Agreement—nor are they well-pleaded—because they are irrelevant. It follows that Claimant's counterstatements of fact cannot properly be considered. To the extent Claimant's counterstatements of fact represent legal argument, the arguments are addressed below.

Consequently, this Board concludes that there is no genuine issue as to any material fact and no disputed material facts that would prevent this Board from considering PSERS' Motion. The Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether the \$15,000 payment Claimant received pursuant to the Settlement Agreement is retirement-covered compensation.

FINDINGS OF FACT

Based on the record, the Board finds the following relevant facts not in dispute:

1. Claimant was enrolled in PSERS in 1995 through his employment with the District.

2. During the 2011-2012 school year, Claimant was paid \$88,578.00 for the year. (PSERS-10).

3. During the 2012-2013 school year, Claimant was paid \$89,616.90 for the year. (PSERS-10).

4. During the 2013-2014 school year, Claimant was paid \$90,588.00 for the year. (PSERS-10).

5. On June 27, 2014, Claimant and the District entered into the Settlement Agreement, in which the District agreed, in part, as follows:

IT IS AGREED AND UNDERSTOOD that Defendant agrees to pay \$15,000, in the form of a salary enhancement in full and final settlement of this matter to Plaintiff and \$5,000 in full and final settlement of attorney's fees and costs to Plaintiff's attorney, Kimberly Borland, Esquire. Defendant will cause the salary enhancements to be made before the end of business on June 30, 2014, and will make such payment and withholdings as are required in the normal course of payroll payments. It is the intent of the parties that this salary adjustment be income qualified for full pension credit by PSERS to be allocated to the year 2013-2014.

IT IS AGREED AND UNDERSTOOD that Plaintiff will receive any and all entitlements he is currently entitled to under the Administrative Compensation Plan based upon a retirement date of September 24, 2014.

IT IS AGREED AND UNDERSTOOD that there is no warranty by Defendant as to how PSERS treats the salary enhancement set forth above for settlement.

IT IS AGREED AND UNDERSTOOD that Plaintiff will submit an irrevocable letter of retirement from his employment with the Wyoming Valley West School District to be effective September 24, 2014.

IT IS AGREED AND UNDERSTOOD that this is a full and final release of all claims of every nature and kind whatsoever and that it releases all claims for injuries, losses, and damages that are presently known or suspected and all claims for injuries, losses, and damages that are not presently known or suspected but which may later develop or be discovered.

IT IS AGREED AND UNDERSTOOD that the consideration paid in exchange for this release is not to be construed as an admission of liability on the part of the Defendant herein, all liability being expressly denied, and that said payment is made to effect a compromise of a disputed claim.

* * *

IT IS FURTHER AGREED AND UNDERSTOOD that this release contains the entire agreement between the parties hereto and that the terms of this release are contractual and not a mere recital.

(PSERS-3).

6. On the same day that Claimant and the District entered into the Settlement Agreement, Claimant signed a separate document in which he irrevocably retired from his employment with the District effective September 24, 2014. (PSERS-4).

7. On August 11, 2014, Claimant submitted an Application for Disability Retirement to PSERS. (PSERS-5).

8. For the period July 1, 2014 through September 24, 2014, the District reported Claimant's total days worked to PSERS as 62 and total actual wages for Claimant in the amount of \$21,655.26, which annualizes to a salary of \$90,230.25 for the 2014-2015 school year. (PSERS-10).

9. On September 24, 2014, Claimant's employment with the District terminated.

10. On September 26, 2014, PSERS notified Claimant that his disability retirement had been approved for one year. (PSERS-7).

11. On January 30, 2015, PSERS provided Claimant with a Finalized Retirement Benefit letter that identified Claimant's Final Average Salary ("FAS") as \$89,726.48. (PSERS-8).

12. PSERS excluded the \$15,000 settlement payment from the calculation of Claimant's FAS. (PSERS-10).

13. Claimant's FAS was calculated based on his actual pay for the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 school years, as follows:

Sch Yr Ending	Expected Service			Actual Service Rendered				Emp Type	Actual Pay	Mbrship Period	Annualized Pay	Rank	Year Divisor	Pay Used
	Mths	Days	Hours	Mths	Days	Hours	Service Credit							
2012	12	260	2,080	12	260	-	1.00	FT	\$88,578.00	1.00	\$88,578.00	4	0.76	\$67,319.28
2013	12	260	2,080	12	260	-	1.00	FT	\$89,616.90	1.00	\$89,616.90	3	1.00	\$89,616.90
2014	12	260	2,080	11	260	-	1.00	FT	\$90,588.00	1.00	\$90,588.00	1	1.00	\$90,588.00
2015	12	260	2,080	2	62	-	0.34	FT	\$21,655.26	0.24	\$90,230.25	2	0.24	\$21,655.26
													3.00	\$269,179.44

14. On April 16, 2015, Claimant appealed the determination that his \$15,000 settlement payment is not retirement-covered compensation ("RCC"). (PSERS-11).

15. The Executive Staff Review Committee ("ESRC"), by letter dated February 3, 2016, denied Claimant's appeal on the basis that the \$15,000 settlement payment was "a damage award and does not represent [Claimant's] standard salary or back wages and benefits for the period at issue." (PSERS-15).

16. On March 4, 2016, Claimant filed an Appeal and Request for Administrative Hearing. (PSERS-16).

17. On March 18, 2016, PSERS filed an Answer. (PSERS-17).

18. On August 14, 2019, PSERS filed a Motion for Summary Judgment.

19. On September 12, 2019, Claimant, through counsel, filed his response to PSERS' Motion.

20. The matter is ripe for Board adjudication.

DISCUSSION

Claimant requests that the Board deem, as retirement-covered compensation (“RCC”), the \$15,000 one-time, lump sum payment (“Settlement Payment”) that he received from the District to settle a lawsuit. Claimant asks that the entire payment be attributed to his final full year of service, i.e., the 2013-2014 school year, when his salary was the highest, for purposes of calculating his final average salary (“FAS”).

A PSERS member’s FAS is a major component in the calculation of a member’s pension benefit, and a higher FAS generally equates to a higher monthly benefit. See 24 Pa.C.S. §§ 8102 (“standard single life annuity”) and 8342 (maximum single life annuity). The Public School Employees’ Retirement Code (“Retirement Code”) defines FAS as the “highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months...” 24 Pa.C.S. § 8102 (emphasis added). “Compensation” is defined, in pertinent part, as remuneration received as a school employee, excluding any “severance payments, any other remuneration or other emolument received . . . which is not based on the standard salary schedule under which he is rendering service.” 24 Pa.C.S. § 8102. “Compensation” is further defined to exclude “any other payment . . . for the purpose of enhancing compensation as a factor in the determination of [FAS].” *Id.* If a payment is not RCC, contributions cannot be reported to PSERS, and the payment cannot be included in the calculation of a member’s FAS.

The Retirement Code’s restrictive definitions of FAS and compensation “reflect the Legislature’s intention to preserve the actuarial integrity of the retirement fund by ‘excluding from the computation of employees’ final average salary all payments which may artificially inflate compensation for the purpose of enhancing retirement benefits.’” *Christiana v. Pub. Sch. Employes’ Ret. Bd.*, 669 A.2d 940, 944 (Pa. 1996) (quoting *Dowler v. Pub. Sch. Employees’ Ret. Bd.*, 620 A.2d 639, 642 (Pa. Cmwlth. 1993) and *Laurito v. Pub. Sch. Employes’ Ret. Bd.*, 606 A.2d 609, 611 (Pa. Cmwlth. 1992)). The Retirement Code significantly limits what payments may be considered RCC by excluding any payment received outside the standard salary schedule. See *Office of Admin. et al. v. State Employees’ Ret. Bd.*, 180 A.3d 740, 752 (Pa. 2018) (citing *Kirsch*

v. Pub. Sch. Emples. Ret. Bd., 985 A.2d 671 (Pa. 2009)). As the body charged with the Retirement Code's execution, this Board has an obligation and right to determine the propriety of any payment made to a PSERS member. See *Laurito*, 606 A.2d at 611; *Perry v. State Employees' Ret. Sys.*, 872 A.2d 273, 278 (Pa. Cmwlth. 2005).¹ Neither PSERS nor the Board is authorized to recognize a damage award, a settlement payment, a severance payment, or compensation that is not based on the standard salary schedule as creating retirement credit where none is due. See *Watrel v. Dep't of Educ.*, 488 A.2d 378 (Pa. Cmwlth. 1985); *McCormack v. State Employees' Ret. Bd.*, 844 A.2d 619 (Pa. Cmwlth. 2004).

The Retirement Code does not identify damage awards or settlement payments as recognized "compensation," but the Board allows the constructive awarding of such amounts as "compensation" when ordered by a court for the purpose of upholding a member's contractual rights for a specified period. *Account of Jeffrey W. Rosenberg*, Docket No. 2016-18, at *7 (PSERB Aug. 10, 2018); see *Abramski v. Pub. Sch. Employees' Ret. Sys.*, 512 A.2d 106, (Pa. Cmwlth. 1986); *Weaver v. State Employees' Ret. Bd.*, 129 A.3d 585 (Pa. Cmwlth. 2015). This interpretation of the Retirement Code allows a member, who successfully challenges or settles an adverse employment action, to be made whole while ensuring against potential windfalls. *Id.* To have a settlement payment recognized as RCC for a particular school year, a claimant must prove that the amount he received represents the actual pay that he would have earned in that school year had the purported adverse employment action not occurred. *Id.* at *7-8. This policy ensures that PSERS does not erroneously factor into a member's FAS an arbitrary payment that "is not based on the member's standard salary schedule under which he is rendering service." *Id.* at *8; see 24 Pa.C.S. § 8102, *Martsof v. State Employees' Ret. Bd.*, 44 A.3d 94, 97 (Pa. Cmwlth. 2012), *appeal denied*, 62 A.3d 380 (Pa. 2013); *Office of Admin. et al.*, 180 A.3d at 752; *Holder*, Docket No. 2016-20.

¹ Cases interpreting provisions of the State Employees' Retirement Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employes' Ret. Bd.*, 713 A.2d 132, 134 n. 3 (Pa. Cmwlth. 1998).

The Commonwealth Court's decision in *Martsof* explains what elements are necessary to establish a payment made under a settlement agreement as RCC. In *Martsof*, the Pennsylvania State Police ("PSP") removed a member of the State Employees' Retirement System ("SERS") from his position with the PSP. Martsof filed grievances and eventually entered into a settlement agreement with the PSP in which the parties agreed he would be reinstated, but would immediately and permanently resign. The PSP agreed to pay him a \$40,000 lump sum settlement. Martsof claimed that the \$40,000 represented back pay and, therefore, was RCC. The Commonwealth Court rejected the claim, explaining that the agreement lacked the necessary detail to accept the payment as RCC:

[T]he issue is whether the settlement payment is back pay and compensation under the Code or some other "appropriate relief." Answering that question, unless a settlement agreement provides that wages lost are being compensated and for what periods, all that settlement agreement indicates is that a grievance is being "brought" and settled, nothing else. The settlement agreement is silent as to the basis of the award, and there is no way of determining whether any hours are connected to the payment, how many hours would be attached, and where to place the contribution in Martsof's account.

Martsof, 44 A.3d at 97 (emphasis added). Notably, even if the *Martsof* agreement had provided such details, the Commonwealth Court stated that the SERS Board was not obliged to accept the payments because it is not bound by an agreement to which it was not a party. See *id.* at 97 n. 4.

This Board recently addressed a factual scenario, which is similar to the scenario here, in the *Account of Robert Holder*, Docket No. 2016-20 (PSERB March 8, 2019). In *Holder*, the claimant entered into a settlement agreement with his school district, which released the district from all claims the claimant had against the district. *Id.* at *21. The settlement agreement required the district to pay the claimant "\$79,697.00 less all legally required withholdings and deductions...with the September 25, 2015 payroll." *Id.* at *19-20. The settlement agreement, on its face, did not identify the settlement

payment as back pay or lost wages; it specified only when the payment was to be made—not when it was earned. The claimant asserted that the amount of the settlement was based on, and corresponded with, the school district’s salary schedules, but the schedules were not referred to or incorporated into the agreement and, therefore, were determined to be improper parol evidence. *Id.* at *22. Consequently, referring only to the settlement agreement itself, this Board held that the settlement payment was not RCC.

Here, Claimant requests that the \$15,000 lump sum payment he received, pursuant to the Settlement Agreement, be recognized as back pay for the 2013-2014 school year. He claims that the payment represents the wages he lost during “the final three years of his employment” (i.e. 2011-2012, 2012-2013, and 2013-2014), due to the District’s failure to award him a raise in 2010. Claimant’s Reply at 1, 4, 9. The Settlement Agreement, however, fails to make any mention or reference to “back pay” or “lost wages.” Rather, the agreement classifies the lump sum \$15,000 payment to Claimant as a “salary enhancement” paid as a “full and final settlement,” “to effect a compromise of a disputed claim.” PSERS-3. Moreover, the Settlement Agreement makes no reference to either the 2011-2012 or 2012-2013 school years. *See id.* Nor does the agreement identify when the “salary enhancement” was earned. *See* 22 Pa. Code § 211.2(b) (“For final average salary purposes, retirement-covered compensation is credited in the school year in which it is earned, not paid.”). The Settlement Agreement specifies only that “the salary enhancement [is] *to be made* before the end of business on June 30, 2014” and is intended to be “*allocated* to the year 2013-2014.” PSERS-3 (emphasis added).

In addition, the Settlement Agreement does not reference or incorporate any salary schedule, and the undisputed facts establish that Claimant’s wages were not increased by \$15,000 in the following school year (i.e., the 2014-2015 school year). *See* PSERS-10. Thus, there is no evidence that would indicate the “salary enhancement” was to be anything other than a one-time payment, outside of Claimant’s standard salary. Claimant argues for the first time, in response, that a portion of the \$15,000 settlement payment *included* monies for *future* salary during the period July 1,

2014 to September 24, 2014. Claimant's Reply at 6. The plain and unambiguous terms of the Settlement Agreement, however, do not support that assertion. Indeed, there is no mention of the 2014-2015 school year in the Settlement Agreement. See PSERS-3. Moreover, Claimant's assertion is inconsistent with his claim that the \$15,000 amount was intended to represent "back pay."²

Claimant asserts that the parties' intent was that the \$15,000 payment be treated as RCC. Claimant's Reply at 3. The intention of the parties to a contract, however, is to be ascertained from the document itself, if its terms are clear and unambiguous. *Insurance Adjustment Bureau v. Allstate Ins. Co.*, 905 A.2d 462, 481 (Pa. 2006). Therefore, any representations that the District may have made to Claimant outside of the agreement are irrelevant. Moreover, "the intent of the parties to a contract to which the Board is not a party is immaterial to whether a payment constitutes [RCC] under the Retirement Code." *Account of Barham, et al.*, Docket No. 2013-06, at *3 (PSERB August 7, 2013) (citing *In re Account of Ronald J. Mento*, Docket No.: 2011-19 (PSERB October 1, 2012), *aff'd*, *Mento v. Pub. Sch. Employees' Ret. Sys.*, No. 2025 C.D. 2012 (Pa. Cmwlth. July 10, 2013)). The Retirement Code defines what constitutes RCC, and the determination of whether a payment is RCC is solely within the authority of the Board. *Barham*, Docket No. 2013-06, at *3; see *Hanna v. Pub. Sch. Employees' Ret. Sys./Bd.*, 701 A.2d 800, 802 n. 4 (Pa. Cmwlth. 1997) (The Board is the administrative body charged with the execution and application of the Retirement Code). Notably, the parties to the Settlement Agreement recognized the role of PSERS in the analysis, noting "IT IS AGREED AND UNDERSTOOD that there is no warranty by [the District] as

² A payment made for a future period is excluded from the Retirement Code's definition of "compensation." Indeed, "compensation" is defined, in pertinent part, as remuneration "received as a school employee," and "school employee" is defined as a person "engaged in work relating to a public school..." 24 Pa.C.S. § 8102. Salary and service are tied together, and an employee may only receive retirement credit for the period the employee was engaged in work and received regular remuneration. See *Hoerner v. Pub. Sch. Employees' Ret. Bd.*, 684 A.2d 112 (Pa. 1996). Thus, had any portion of the Settlement Payment been for future salary, the payment would not be RCC because it was not tied to actual service.

to how PSERS treats the salary enhancement set forth above for settlement.” PSERS-3.

For the reasons set forth above and as a matter of law, Claimant’s appeal must be denied as the \$15,000 payment to the Claimant by the District was not “compensation” as defined by the Retirement Code. Rather, it was a payment made in exchange for a release of all claims by the Claimant against the District and was made in conjunction with an irrevocable notice of retirement.

CONCLUSION

For the above stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether the Settlement Payment is RCC. Accordingly, PSERS’ Motion for Summary Judgment is GRANTED, and Claimant’s Appeal and Request for Administrative Hearing is DENIED.

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF RAYMOND J. WHALEN
DOCKET NO. 2016-05
CLAIM OF RAYMOND J. WHALEN

ORDER

AND NOW, upon consideration of Claimant's Appeal and Request for Administrative Hearing and PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in accordance with 22 Pa. Code § 201.6(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimant's request that PSERS treat his \$15,000 settlement payment as retirement-covered compensation.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: Dec 6, 2019

By: Melva S. Vogler
Melva S. Vogler, Chairman